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SUBJECT: GAY RIGHTS IN GANDHI-LAND

¶1. (SBU) Summary: On June 29, several hundred gay activists plan to march in three Indian cities (New Delhi, Kolkata and Bangalore) in what is anticipated to be the largest display of gay pride in a country where homosexuality is considered illegal or "against the order of nature." Incidentally, on July 2, the Delhi High Court is expected to rule on the constitutionality of Section 377 of the Indian Penal Code (IPC), which criminalizes and punishes homosexual acts. The law is a carryover from British rule and remained on the books after India gained its independence in 1947. Non-government organizations (NGOs) that provide support to gay men, women, transgenders and transsexuals are calling for the equal treatment of sexual minorities in India. However, Indian society has yet to embrace its gay community, and, in most scenarios, continues to shun them. The activism surrounding Section 377, though impressive for a conservative nation, is largely under-acknowledged by the media. Activists tell PolOffs that the Delhi High Court will likely stall in issuing its decision to either repeal or "read down" Section 377. If and when the Delhi High Court verdict does occur, many are not optimistic that sexual minorities will be provided with any legal rights in the near future. End summary.

GAYS IN INDIA FACE SIGNIFICANT DISCRIMINATION

¶2. (SBU) In liberal circles, sexuality in India is generally viewed as a bourgeois issue and too taboo to discuss in polite company. Homosexuality and the rights of other sexual minorities are considered deviant and scarcely register as a "serious" human rights concern or priority in India's vibrant civil society. Instead, the gay community largely lived in the shadows of Indian society until about a decade ago when gay rights groups began campaigning for the rights of sexual minorities. Despite economic and social progress, elements of India remain deeply conservative, where even out-of-caste marriage is anathema in many families and places. Some families opt to disown their gay children, rather than risk social alienation. Media periodically carries stories of parents hanging their children by their legs once they are discovered to be gay. In rural India, social stigmatization of gays remains particularly profound. Urban India is more open and every major metro area has cruising districts.

¶3. (SBU) There are also several reports of violence against the transgender and transsexual community, particularly hijras (often called "eunuchs" in English, though few have undergone castration) and other "third sex" groups. Many hijras harass people for money, engage in sex work, and are becoming increasingly vulnerable to HIV/AIDS. There are allegations of hijras forcefully castrating people in order to maintain their community.

¶4. (U) On June 29, several hundred gay activists plan to march in three Indian cities (New Delhi, Kolkata and Bangalore) in what is anticipated to be the largest display of gay pride in a country where homosexuality is legally considered "against the order of nature." While gay pride parades have previously taken place in Kolkata, these events

will be a first for New Delhi and Bangalore. Ostensibly commemorating the 1969 Stonewall Riots in New York, the parade is well-timed as the Delhi High Court is expected to rule on the constitutionality of Section 377 of the Indian Penal Code (IPC), which criminalizes and punishes homosexual acts.

GAY RIGHTS AND SECTION 377

¶5. (SBU) Introduced during British Rule, Section 377 was drafted in 1860 by Lord Macaulay and is commonly referred to as the "Anti-Sodomy Law." According to the IPC, "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine." The law was one of several that remained on the books post-colonialism. The Naz Foundation, a Delhi-based NGO working on HIV/AIDS prevention, argues that the law contravenes rights enshrined in the Indian constitution, including equality, privacy and freedom of expression.

¶6. (SBU) In 2001, the Naz Foundation filed a petition in the Delhi High Court asking for Section 377 to be "read down" (vice repealed). Essentially, the petition argues that private, consensual sex should be removed from its criminalizing ambit. However, Naz and many other NGOs assert that Section 377 should remain on the books in order to prosecute child abuse cases. (Note: There is currently no extensive legal framework to prosecute child sexual abuse. Further, rape law is applicable only to women. Therefore, NGOs argue that reading down section 377 is essentially a compromise in the absence of other laws to protect women and children from sexual abuse or assault. End Note.) Since the Naz Foundation filed its 2001 petition, other gay rights groups in India have joined the effort. In effect, Section 377 is rarely used to arrest or prosecute gay adults in consensual sex, but it remains a tool to threaten, blackmail or extort homosexuals in public areas.

¶7. (SBU) Vipin Bhatt, an Advocate for the Center of Child Rights, explained that the Delhi High Court cannot legally change the IPC, but can give a recommendation to the Ministry of Home Affairs to do so. NGO Lawyers Collective confirmed that recommending a change the IPC is complicated and judges require more time to hear the current case.

POLITICAL PARTIES & SECTION 377

¶8. (SBU) Despite the usual inclination to indiscriminately court every possible vote bank in India, no major political party in India has shown much willingness to embrace gay rights as part of its platform. The BJP has come out most strongly against Section 377's repeal or reading down, accusing the gay rights groups of being part of a broader conspiracy from the West to undermine traditional Indian values. In fact, the BJP, in a move of convenient secularism, cited references from the Qur'an and the Bible to support its anti-gay rhetoric. (Note: There are numerous references to homosexual love in Hinduism. End Note.) The Congress Party has also avoided lending its support to the rights of sexual minorities in India.

GROWING MOMENTUM IN SOCIETY

¶9. (SBU) Despite GOI and political recalcitrance, there is growing momentum among the elite to change Section 377. In 2006, 100 Indian literary figures, including Vikram Seth and Amartya Sen, called for the repeal of Section 377. The petitioners filed a review petition before the High Court pointing out that the homosexual community in India, on

account of Section 377, is a socially disadvantaged group, which is unable to approach the court directly for fear of being identified and subject to harassment by the police. Some journalists have accused the Mumbai police of extorting money from homosexuals. In addition, the middle class has become more accepting of the gay community, evidenced by the media attention to the upcoming gay rights march.

¶10. (SBU) Comment: India's burgeoning gay pride movement and the campaign against Section 377 must look beyond the law to raise public consciousness, awareness and support of sexual minority rights. Even if the law is read down or repealed, which is unlikely, it will not be enough to reverse the discrimination, stigmatization and oppression confronting the gay community.

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